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SEP 11 2002

No. 02-54

IN THE

Supreme Court of the United States

COLTEC INDUSTRIES, INC.,
Petitioner,

v.

WILLIAM P. HOBGOOD, *et al.*
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR THE TRUSTEES OF THE UMWA COMBINED BENEFIT FUND IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly sustained the district court's enforcement of the parties' Escrow Agreement and petitioner's voluntary dismissal with prejudice of all of its constitutional claims.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-26a) is reported at 280 F.3d 262. The December 4, 2000 opinion of the district court (Pet. App. 27a-35a) is reported at 184 F.R.D. 60. The July 20, 2000 opinion of the district court (Pet. App. 36a-42a) is unreported. The January 25, 1999 opinion of the district court (Pet. App. 43a-50a) is reported at 184 F.R.D. 60.

FEDERAL RULES OF CIVIL PROCEDURE INVOLVED

Fed. R. Civ. P. 60(b)(5) and (6) provide:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (5) the judgment has been satisfied, released, or

> discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

STATEMENT OF THE CASE

As petitioner acknowledges (Pet. 2 n.2), the petition presents only "[a] summary version" of the "complex procedural history" of this case. Unfortunately, petitioner's "summary version" is incomplete and misleading, as a review of the court of appeals' decision demonstrates. In fact, this case turns on the district court's enforcement of petitioner's own voluntary agreements and the court of appeals' refusal to disturb that enforcement decision. Two federal courts have reviewed the relevant facts and have agreed both as to what those facts are and what their legal consequences should be. Petitioner's obligation to pay to the UMWA Combined Benefit Fund the sums that petitioner voluntarily agreed to place in escrow presents no legal issue warranting review in this Court. Rather, it is the consequence of petitioner's own voluntary litigation judgments and decisions, which the courts below held should not be ignored or excused. That decision was correct and does not raise any legal issue of more general application.

A. Historical Background

In October 1992, Congress enacted the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701 *et seq.* and 30 U.S.C. § 1232(h) (the "Coal Act"), to ensure the continuation of health benefits for retired coal miners and their families. The Coal Act was passed to remedy a financial crisis that threatened the solvency of the collectively bargained UMWA multiemployer system, which, by the time Congress acted, was providing health benefits to more than 100,000

beneficiaries, including former employees of two wholly-owned subsidiaries of Coltec Industries, Inc. ("Coltec").

The history of this financial crisis and the events leading to enactment of the Coal Act have been reviewed at some length by this Court and several federal courts of appeals. *See e.g. Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. ___, 122 S. Ct. 941, 946-48 (2002); *Eastern Enterprises v. Apfel*, 524 U.S. 498, 504-15 (1998) (plurality opinion); *In re Blue Diamond Coal, Co.* (*Blue Diamond Coal Co. v. Shalala*), 79 F.3d 516 (6th Cir. 1996), *cert. denied*, 519 U.S. 1055 (1997); *Lindsey Coal Mining Co. v. Chater*, 90 F.3d 688 (3rd Cir. 1996).

Given this extensive precedent, we do not repeat here the nearly 50 years of collective bargaining history that eventually led to enactment of the Coal Act. For present purposes, it suffices to explain that Congress provided in the statute for the creation of two new statutory trust funds. One of these funds, the UMWA Combined Benefit Fund (the "Combined Fund"), is at issue in this case. Congress directed that the two pre-existing collectively bargained multiemployer health care plans – the UMWA 1950 Benefit Plan and the UMWA 1974 Benefit Plan – be merged into the Combined Fund as of February 1, 1993. 26 U.S.C. § 9702(a)(2). Under Section 9706 of the Coal Act, individual beneficiaries of the Combined Fund then were assigned to specific former employers (or to related persons to such employers) under the statutory criteria prescribed by Congress. 26 U.S.C. § 9706. The Coal Act charges the Commissioner of Social Security with the responsibility of calculating the amount of the health benefit premium and the Combined Fund is charged with collecting these premiums from the employers and using these funds to pay for the health care of the retirees and their dependents. 26 U.S.C. § 9704.

B. Proceedings in the Courts Below

On November 23, 1993, Coltec, along with Four Leaf Coal Company ("Four Leaf") and L.G. Wasson Coal Mining Corporation ("Wasson"), filed a four-count complaint against the Trustees of the Combined Fund alleging that the Coal Act was unconstitutional as applied to them.[1] Coltec also sought a temporary restraining order ("TRO") and preliminary injunction enjoining the Trustees from assessing any premiums against it.

On December 13, 1993, Coltec filed an amended complaint adding a fifth count – a statutory claim that certain Combined Fund beneficiaries allegedly were assigned improperly to Coltec by the Commissioner of Social Security under 26 U.S.C. § 9706(a).

Shortly thereafter, on December 16, 1993, Coltec entered into an Escrow Agreement with the Combined Fund and its Trustees. Under the Agreement, Coltec agreed to withdraw its request for a TRO and to deposit its Combined Fund premiums into an interest-bearing escrow account. The Combined Fund agreed that those payments would be deemed payments made directly to the Combined Fund. The parties further agreed that, if Coltec's motion for a preliminary injunction was denied, the monies in the escrow account, plus accumulated interest, would be paid to the Combined Fund, and that, if Coltec's motion was granted, the monies, plus accumulated interest, would be returned to Coltec. Because the payments into the escrow account would be deemed payments to the Combined Fund, the Combined Fund agreed not to seek liquidated damages and attorneys' fees from Coltec in seeking to collect these amounts. By reason of this arrangement, Coltec

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[1]Four Leaf and Wasson settled their disputes with the Combined Fund and are not parties to this petition

was also able to avoid the statutory penalty provided in Section 9707(b) of the Coal Act for failure to pay premiums on a timely basis. 26 U.S.C. § 9707(b).

After entering into the Escrow Agreement, Coltec repeatedly assured both the district court and the Combined Fund that it was making the agreed-upon payments into the account. As discussed below, however, nearly six years later, after the Combined Fund moved to compel the disbursement of the funds in the escrow account, Coltec disclosed that the escrow account never existed and that Coltec never complied with the terms of the Escrow Agreement.

On January 7, 1994, the Combined Fund filed an Answer and a two-count counterclaim seeking a declaratory judgment that the Coal Act was constitutional as applied to plaintiffs and payment of certain past-due premiums from plaintiffs Four Leaf and Wasson. The Combined Fund also requested that the district court award such other relief as the court deemed proper. Later in January 1994, the United States intervened to defend the validity of the statute.

In or about May 1996, Coltec decided not to pursue its preliminary injunction motion, and it notified the district court that the motion was being voluntarily withdrawn. On May 9, 1996, the court entered an Order dismissing the preliminary injunction motion. (Pet. App. 60a).

C. The Joint Stipulation and Coltec's Voluntary Dismissal of its Claims with Prejudice

By mid-1997, after Coltec's case had been pending for well over three years, several federal courts of appeals, including the Third Circuit, had addressed the validity of the Coal Act, and they were unanimous in sustaining the statute against constitutional attack. *See* cases cited in *Eastern*, 524 U.S. at

519, n. 4 (plurality opinion). At the same time, Coltec was aware of the decision in *National Coal Ass'n v. Chater*, 81 F.3d 1077 (11th Cir. 1996) ("*NCA*"), which held that the Commissioner of Social Security incorrectly calculated the annual per beneficiary health care premium for the Combined Fund under 26 U.S.C. § 9704(b)(2). In the earlier NCA litigation, the district court had ordered the Commissioner of Social Security to "[r]ecompute the initial premiums and all subsequent premiums in accordance with section 9704(b)(2) of the Coal Act . . . . " No. CV-94-H-780-S, 1995 U.S. Dist. LEXIS 21125 (N.D. Ala. July 20, 1995), *aff'd*, 81 F.3d 1077 (11th Cir. 1996).

Coltec also knew that, following NCA, a trade association and several of its member coal mining companies had initiated non-constitutional litigation in the Northern District of Alabama, seeking refunds or credits for alleged overpayments that resulted from SSA's alleged miscalculation of Combined Fund premiums during the Combined Fund's first three fiscal years (the so-called "premium differential"). *See National Mining Ass'n. v. Apfel*, 97 F. Supp. 2d 1070 (N.D. Ala. 1999) ("*NMA*").

Against this legal backdrop, Coltec initiated settlement discussions with the Combined Fund. Coltec offered to dismiss its constitutional claims with prejudice in exchange for the right to either take advantage of a favorable ruling in NMA or to litigate the "premium differential" issue anew in this case if the result in NMA was unfavorable to the coal operators.

Accordingly, on June 30, 1997, at Coltec's request, the parties stipulated that:

- Coltec would file a Second Amended Complaint setting forth a new claim seeking a refund or credit for the premium differential;

- The Combined Fund would not oppose Coltec's request for leave to file the Second Amended Complaint;

- Coltec would dismiss all remaining claims, including all of its constitutional challenges to the Coal Act, with prejudice;

- The parties would jointly request that the district court stay the new claim for relief pending resolution of the NMA litigation; and

- If the final judgment in *NMA* was favorable to the plaintiffs, Coltec would be entitled to get the benefit of that ruling; if not, Coltec would be entitled to litigate the *NMA* issue in this action.

(A127-30).[2] The district court approved these terms and entered them as an order of the court on July 2, 1997 (Pet. App. 55a-58a). The dismissal of counts one through five was then ordered by the court on August 19, 1997. (Pet. App. 53a-54a). On December 18, 1997, the district court entered an order staying the new claim for relief pending resolution of the *NMA* litigation. (Pet. App. 51a-52a).

D. The Decision in *Eastern Enterprises*

At the time that Coltec entered into the Stipulation, it was aware, or should have been aware, that other coal companies were continuing to pursue constitutional challenges to the Coal Act. *See, e.g., Eastern Enterprises v. Apfel*, 110 F.3d 150 (1st Cir. 1997), *rev'd*, 524 U.S. 498 (1998); *Drydock Coal Co. v. Shalala*, Civ. No. C2-94-927 (S.D. Ohio Nov. 13,

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[2]"A" refers to the appendix in the court of appeals.

1997), *vacated and dismissed as moot*, No. 98-3133 (6th Cir. Oct. 1, 1998); *Mary Helen Coal Corp. v. Hudson*, 976 F. Supp. 366 (E.D. Va. 1997), *rev'd*, 164 F.3d 624 (4th Cir. 1998). Not all of the many lawsuits challenging the Coal Act had been finally resolved, and this Court had not yet spoken on the issue.

On October 20, 1997, this Court granted *certiorari* in *Eastern Enterprises v. Apfel*, 522 U.S. 931 (1997). On June 25, 1998, the Court decided the case. Four Justices concluded that the Coal Act effected an unconstitutional taking as applied to Eastern. 524 U.S. at 537. The plurality declined to reach Eastern's substantive due process claim, but it acknowledged that the Court "has expressed concerns about using the Due Process Clause to invalidate economic legislation." *Id.* Justice Kennedy, concurring in the judgment and dissenting in part, agreed with the four dissenting Justices that the Takings Clause does not provide the proper constitutional basis for determining the validity of economic regulatory legislation like the Coal Act. *Id.* at 540-47. Justice Kennedy concluded, however, that, as applied to Eastern, the Coal Act violated the substantive component of the Due Process Clause. *Id.* at 547-50. The four dissenting Justices would have sustained the statute against both of Eastern's Fifth Amendment attacks. *Id.* at 550-68.

E. Coltec's Attempts to Avoid Its Deal and the Discovery of Coltec's Misrepresentations

Shortly after the decision in *Eastern Enterprises*, Coltec filed several motions with the district court seeking relief from the Escrow Agreement, the Stipulation, and the resulting dismissal of Coltec's constitutional claims. In the first motion, Coltec asked the district court to abrogate the parties' agreements and to permit Coltec to reassert, in a third amended complaint, the very constitutional claims that it had agreed to dismiss with prejudice in exchange for the opportunity to add

Count 6 and thus preserve the "premium differential" issue. The second motion sought relief under Rule 60(b) of the Federal Rules of Civil Procedure from the final judgment dismissing the constitutional claims. (A176). In the third motion, Coltec sought to lift the stay on count 6 (the premium differential issue) and for leave to file the third amended complaint. (A182). As the district court put it, "[i]n essence, plaintiffs wish[ed] to undo their earlier agreement and to litigate their constitutional claims to judgment, while continuing to pursue their miscalculation claim." (Pet. App. 44a).

In a memorandum opinion dated January 25, 1999, the district court rejected Coltec's effort to revive its constitutional claims under either Rule 60(b)(5) or Rule 60(b)(6). Based on that ruling, the court also denied Coltec's motions to lift the stay entered under the Stipulation and to file an amended complaint reasserting Coltec's constitutional challenges to the Coal Act.

The district court, citing *Ackermann v. United States*, 340 U.S. 193 (1950), held that "[f]ailing to litigate to its conclusion a matter that could have been pursued (at least theoretically) to the Supreme Court does not constitute an exceptional circumstance" that would permit the extraordinary relief of reopening a dismissal with prejudice. (A190). The court explained that a mere change in decisional law, even when such a change occurs because of a constitutional ruling, does not provide a sufficient basis for relief under Rule 60(b)(6). Stressing that the disposition of the constitutional claims in this case was the product of Coltec's own choice, the court observed:

> The applicability of this basic doctrine is further strengthened -- not weakened -- by the fact that the judgment from which plaintiffs seek relief was entered by consent pursuant to a partial settlement

> agreement in which plaintiffs agreed to forever drop their constitutional claims in exchange for the right to litigate their miscalculation theory. When parties make "a free, calculated and deliberate choice to submit to an agreed upon decree rather than seek a more favorable litigated judgment, their burden under Rule 60(b) is perhaps even more formidable than had they litigated and lost."

(Pet. App. 47a; citations and footnote omitted).

The district court also ruled that, because the dismissal at issue does not have prospective application, Coltec was not entitled to relief under Rule 60(b)(5). (Pet. App. 48a). "Essentially," wrote the district court, "[Coltec] admitted liability and chose to challenge the measure of damages. This 'deal' -- which must be enforced -- partakes of the nature of money damages, not of an injunction. As such, it falls outside of the 'prospective application' clause of Rule 60(b)(5)." (*Id.*; footnote omitted).

On February 10, 1999, the district court in Alabama directed the Combined Fund to refund or credit to the *NMA* plaintiffs the disputed premium differential without interest. 97 F. Supp. 2d at 1084. During the ensuing appeal and cross-appeal, the parties reached a settlement, with the plaintiff coal companies dropping their claim for interest and the Combined Fund agreeing to make a refund or credit available to all companies that paid premiums at the pre-*NCA* level.

The Combined Fund then notified Coltec that *NMA* had been resolved in a manner favorable to the coal operators and it offered Coltec "a credit of $152,717.92, representing the premium differential paid during the first three plan years."

(SA402-03, 394-97)[3]. The Combined Fund requested that Coltec, pursuant to the Escrow Agreement, instruct the escrow agent to "disburse the funds in the [escrow] account, along with all accumulated interest, to the Trustees . . . ." (SA398). The Combined Fund further stated that the credit would satisfy the Trustees' obligations under the parties' Stipulation and the district court's December 18, 1997 stay order. (SA403; *see* Pet. App. 51a-52a).

After Coltec failed to respond and continued its refusal to disburse funds under the Escrow Agreement, the Combined Fund moved for an order directing Coltec to disburse the escrowed funds pursuant to the terms of the parties' Stipulation and the Escrow Agreement. (A219).[4] At this time, in opposing the Combined Fund's motion, Coltec for the first time, some six years after the putative creation of the escrow account, confessed its longstanding deception. Although Coltec repeatedly had assured the Combined Fund and the district court that it was making the agreed-upon payments into the account (*see* A136, A170, A187.42, A198), the truth was that no escrow account had ever existed – Coltec had never established the account and had never made a single payment into it. In ruling on the Combined Fund's request for an order directing Coltec to release the escrow funds, the district court, in a memorandum opinion and order dated July 20, 2000, stated:

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[3]"SA" refers to the Supplemental Appendix filed in the court of appeals.

[4]In the meantime, Coltec filed a motion for limited reconsideration of the district court's January 25, 1999 order, which the district court denied on August 9, 1999. (A196-204).

> I have little trouble granting defendants' motion. In 1997, the plaintiffs in this case struck a bargain. Anticipating that the Coal Act would survive constitutional scrutiny, plaintiffs agreed to dismiss their constitutional claims in favor of having the right to piggyback on the *NMA* litigation in Alabama. At the time, the plaintiffs knew the risks and the potential benefits of this approach. Now that the deal has resulted in a benefit for the defendants, plaintiffs want, in essence, to renegotiate their contract. I cannot permit that to happen. Plaintiffs must stand by their bargain . . . [and] disburse the funds that they agreed to place in escrow back in 1993, plus interest accumulated to date.

(Pet. App. 39a-40a). With respect to Coltec's numerous misrepresentations about the escrow account, the court commented:

> I also find the revelation that there is no escrow account to be troubling. At no time between the execution of the December 16, 1993 escrow agreement and plaintiffs' response to the instant motion on June 30, 2000 did the plaintiffs ever inform this court or the defendants that there was no escrow account in existence. Indeed, on February 4, 1999, plaintiffs advised the court of the following: "Plaintiff Coltec, in particular, has paid its Coal Act assessments since 1993 into an escrow account pending resolution of the respective rights of the parties, and such monies remain in escrow. This escrow fund contains several million dollars." I cannot fathom how such representations could have been made to this court if they were not true.

(Pet. App. 41a n.1; citation omitted).

Seeking to profit from its earlier misrepresentations, Coltec argued that the Combined Fund could not obtain any relief because the escrow account never existed. (A287-88). The district court properly rejected Coltec's attempt to use its own breach as a shield against liability. (Pet. App. 40a-41a; footnote omitted).

The district court also rejected Coltec's contention that it should not have to pay under the Escrow Agreement because the trigger for disbursement was a *denial* of Coltec's motion for preliminary injunction, a denial that, in Coltec's view, never occurred, since the motion was dismissed with prejudice, not denied. (A301).

Coltec's last line of defense was the November 1998 letter from SSA, stating that, after *Eastern*, Coltec's beneficiary assignments under the Coal Act were void.[5] On that basis, Coltec reasoned, its liability must be "zero," notwithstanding its agreements with the Combined Fund. (A302). The district court disagreed and refused to allow Coltec to escape the consequences of its own litigation strategy. (Pet. App. 41a-42a).

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[5]In November 1998, SSA sent letters to all companies similarly situated to Eastern Enterprises, including Coltec, informing them that their assignments under the Coal Act were void. Thus, the only amounts that are outstanding in this case are those that arose prior to the decision in *Eastern Enterprises* ant that should have been paid into escrow pursuant to the parties' agreement.

Despite the district court's strongly worded order, Coltec still refused to make the required payments and noted its appeal. Shortly thereafter, the district court ordered the parties to file motions by September 25, 2000 to resolve all remaining issues. In response, Coltec asked the district court to vacate its July 20 Order. The district court again rejected Coltec's arguments, including Coltec's revisionist version of the agreements between the parties:

> It is undisputed what that "deal" is: plaintiffs are to pay defendants all funds that they set aside to meet their Coal Act obligations minus whatever discount they received under the *NMA* litigation.
>
> * * *
>
> Coltec's reading of the Stipulation would strip it from its context, ignore its history, and divest it of all meaning. . . . [P]laintiffs struck a deal with the defendants. They agreed to forgo their constitutional claims and limit their challenge strictly to tinkering with the amount due under the Act. In essence, plaintiffs froze in time their liability under the Coal Act. They agreed to pay defendants, leaving open the question of how much.

(Pet. App. 32a-33a). The court continued:

> Plaintiffs no doubt wish they had struck a different deal. They did not. They were faced with tough choices and sought to make the best of what appeared to be a hopeless cause. Based on the record before me, I have little doubt about what the

> Stipulation between the parties says and what it means.

(Pet. App. 33a-34a; citation omitted).

F. Coltec's Appeal

On appeal, Coltec maintained that the district court erred in refusing to allow Coltec to revive its constitutional arguments and in ordering Coltec to pay the Combined Fund the amounts it had agreed to pay. The court of appeals denied all of Coltec's claims and found that the district court had properly focused on "the principal issue of whether Coltec should be excused from the effects of a deal it voluntarily made." (Pet. App. 18a).

The court first addressed Coltec's contention that it should prevail even without the constitutional claims because its Coal Act liability is zero. The court ruled that "[i]t is manifest that Coltec explicitly agreed in the Stipulation to dismiss with prejudice its first five counts, which stated constitutional challenges to the Coal Act and a statutory challenge to the company's assignments, thereby forfeiting these avenues of contesting its underlying liability."

(Pet. App. 11a). Count 6 was not intended as a substitute for the first five counts. In the court of appeals words, "[a]s contemplated by the Stipulation, the sixth count did not challenge either Coltec's assignments or its underlying premium liability based on these assignments." *Id.*

In considering Coltec's Rule 60(b)(5) motion, the court observed that this subsection "empowers a court to modify a judgment only if it is 'prospective,' or 'executory'." (Pet. App. 13a (citations omitted)). The court rejected Coltec's argument that the dismissal with prejudice was "prospective" because it

prevented Coltec from reasserting its constitutional claims. Acceptance of this argument would render Rule 60(b)(5)'s requirement of "prospective application" meaningless. (Pet. App. 14a.).

With respect to Coltec's claim for relief under Rule 60(b)(6), the court, citing *Agostini v. Felton*, 521 U.S. 203, 239 (1997), ruled that "a change in law subsequent to the challenged order rarely justifies Rule 60(b)(6) relief." (Pet. App. 17a). The court noted that Coltec clearly knew how to provide for contingencies such as future case law, as evidenced by its reference to the *NMA* litigation, and knew that there were still pending constitutional challenges to the Coal Act. The court held that "[i]n retrospect in light of the Supreme Court's decision in *Eastern*, Coltec may wish that it had not made this deal, but courts have not looked favorably on the entreaties of parties trying to escape the consequences of their own 'counseled and knowledgeable decisions.'" (Pet. App. 19a). Relying on *Ackermann*, the court concluded that "even if Coltec's decision to settle was improvident in hindsight, the decision has been made and cannot be revisited." (Pet. App. 20a).

The court of appeals also declined to accept Coltec's argument that the district court lacked "jurisdiction" to award money damages because the Combined Fund had not requested any monetary relief and had not prevailed on its declaratory judgment count. The court held that the Combined Fund's

> entitlement to pre-Eastern premiums arises from the Agreement, not the Coal Act. This renders irrelevant Coltec's lengthy discussion on the court's lack of authority under the Coal Act to impose liability on it. The real issue is whether the Stipulation, in conjunction with the Agreement,

> which was 'so ordered,' authorizes the judgment imposed by the court.

(Pet. App. 25a).

Similarly, the court rejected Coltec's argument that the Stipulation does not provide a basis for the award finding that the language of the Stipulation supports the district court's interpretation of the parties' deal and that "[s]imply put, the Fund is entitled to the money pursuant to the parties' bargain."

Finally, the court "easily disposed" of Coltec's argument that, in light of the Commissioner's letter, Coltec did not have any statutory premium liability at the time of the judgment stating that "the premiums referred to in the Stipulation and the Agreement clearly refer to the premiums due before Eastern was decided." (Pet. App. 25a). In sum, the court determined that

> Coltec made a binding agreement with the Fund when it signed the Agreement, the Escrow Agreement, and the Stipulation. The District Court found no basis in the Supreme Court's ruling in *Eastern* to allow Coltec to back out of its agreements, nor do we. Because Coltec failed to open and maintain the escrow account as represented to the court and to the Fund, Coltec does not deserve relief from the agreements it freely entered.

(Pet. App. 25a-26a).

ARGUMENT

At the core of this case is Coltec's voluntary litigation strategy. Despite Coltec's attempt to cast its petition as

presenting questions of constitutional violations and separation of powers, Coltec's request for review is in reality nothing more than a claim that the final judgment against it should be disregarded because it made a bad tactical decision.

In presenting its petition to this Court, Coltec fundamentally mischaracterizes much of the procedural and factual history of this case and completely ignores the bases for the rulings below. Most significantly, Coltec fails to disclose that underlying the appellate court's decision was Coltec's own conduct in voluntarily choosing to dismiss its constitutional claims with prejudice. Coltec elected to file suit against the Trustees challenging the Coal Act. It elected to pay its Combined Fund premiums into escrow under specified terms for their eventual disbursement. It later elected to strike a deal with the Trustees and agreed to give up its claims challenging the constitutionality of the Coal Act in exchange for being able to file, without objection from the Combined Fund, a Second Amended Complaint asserting a claim limited to challenging the method of calculating the assessed premiums. It elected to dismiss these constitutional claims with prejudice and without any contingencies. Not surprisingly, Coltec's litigation choices, like those of any other litigant, have real world consequences. They involve both risk and reward. But, as is legal commonplace, litigation must end at some point, and final judgments should remain final, especially in cases involving voluntary settlements.

Coltec also fails to acknowledge the line of cases, just like this one, in which federal courts have refused to invoke Rule 60(b) to disturb final judgments for the sole purpose of allowing retrospective monetary relief after unsuccessful or settled challenges to the Coal Act. *See Blue Diamond Coal Co. v. Massanari*, 249 F.3d 519 (6th Cir.); *cert. denied*, 122 S. Ct. 643 (2001); *Holland v. Virginia Lee Co.*, 188 F.R.D. 241 (W.D. Va.

1999); *Lindsey Coal Mining Co. Liquidating Trust v. Apfel*, No. 94-143 (W.D. Pa. 1999); *Templeton Coal Co. v. Apfel*, No. TH 93-158-C-T/H (S.D. Ind. 1999).[6] In addition, Coltec makes no mention of the extensive case law upon which these courts, as well as the courts below, relied. As in *Ackermann*, federal courts across the country have consistently held that litigants are not to be relieved from their free, calculated, and deliberate litigation choices.

Despite these uniform holdings, Coltec argues that this case presents "a departure from the accepted and usual course of judicial proceedings" so as to call for an exercise of this Court's supervisory powers. (Pet. at 6). To the contrary, the court of appeals' decision at issue here is correct and consistent with the long history of cases establishing that a "final" judgment really is final even when matters of constitutional interpretation are raised. There is no basis for retrospectively disturbing these results.

A. Coltec's Argument is Contrary to Well-Established Authority That Free, Calculated, and Deliberate Litigation Choices are Not to be Excused

On June 30, 1997, Coltec struck a deal with the Combined Fund. Apparently believing that the likelihood of succeeding on its constitutional claims was slim, Coltec voluntarily chose to dismiss those claims with prejudice, and in

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[6]The unreported decisions in *Lindsey* and *Templeton* are reproduced as an appendix to this brief.

return, it received valuable consideration – the opportunity to receive the benefit of the *NMA* litigation without additional litigation by Coltec or, if the results were not favorable, the ability to pursue a claim for recalculation of the assessed premiums in this action. The Escrow Agreement and Stipulation were not only binding agreements between the parties, they were also an order of the district court that was implemented, in part, through a further order dismissing Coltec's constitutional claims with prejudice. Coltec's wholesale abandonment of its legal remedies was counseled and knowledgeable and made for a distinct tactical reason. As explained below, it is well-settled that a party may not undo its settlement agreement and avoid a final judgment merely because a subsequent judicial decision proves that the settlement was an unwise one.

One of the primary purposes of the federal courts is "the conclusive resolution of disputes within their jurisdiction." *Montana v. United States*, 440 U.S. 147, 153 (1979). As this Court said more than fifty years ago, "[t]here must be an end to litigation someday, and free, calculated, deliberate choices are not to be relieved from." *Ackermann*, 340 U.S. at 198. In *Ackermann*, a plaintiff whose certificate of naturalization was revoked during World War II sought relief under Rule 60(b), arguing that he had not appealed because his attorney had informed him it would be too expensive. Subsequently, a second plaintiff, whose naturalization was also revoked, appealed and won. This Court held that Rule 60(b) relief was properly denied because Ackermann had made a knowing and deliberate choice to forgo appeal. *Id.*

Since *Ackermann*, this Court and others repeatedly have held that "[i]ntervening developments in the law by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6)." *Agostini*, 521 U.S. at 239. *Accord, Cincinnati Ins. Co. v. Flanders Elect. Motor Services, Inc.*, 131 F.3d 625, 628 (7th Cir. 1997) (denying Rule 60(b) motion based on change in decisional law); *Biggins v. Hazen Paper Co.*, 111 F.3d 205, 212 (1st Cir.), *cert. denied*, 522 U.S. 952 (1997) (same); *DeWeerth v. Baldinger*, 38 F.3d 1266, 1272-73 (2d Cir.), *cert. denied*, 513 U.S. 1001 (1994) (same); *In re Fine Paper Antitrust Litig.*, 840 F.2d 188, 194 (3d Cir. 1988)(same); *Berryhill v. United States*, 199 F.2d 217, 219 (6th Cir. 1952) (same).

Coltec makes no mention of these cases or the fact that it unsuccessfully sought relief below under Rule 60(b). Rather, Coltec simply glosses over the entire issue of finality by claiming that its case "was still pending when *Eastern Enterprises* was decided" and, as such, the lower courts were not free to ignore that decision. (Pet. at 7). The obvious flaw in this argument is that Coltec's constitutional claims were *not* still pending when *Eastern Enterprises* was decided, and Coltec had entered into agreements that the courts below also were not free to ignore. Coltec elected to abandon its constitutional claims with prejudice and a final judgment was entered against Coltec on these claims. Although Coltec's premium differential claim was pending at the time this Court issued its decision in *Eastern Enterprises*, Coltec's constitutional claims had been fully and finally resolved by that time, and Coltec had agreed to pay the Combined Fund the sums that should have been deposited into escrow.[7]

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[7]Indeed, a prerequisite for seeking relief under Rule 60(b), as Coltec did, is that a final judgment has been entered. Additionally, to the extent Coltec suggests that because it chose

Once this faulty factual premise is removed, Coltec's reliance on *Reynoldsville Casket Co. v. Hyde*, 514 U.S. 749 (1995) quickly crumbles. Coltec cites *Reynoldsville Casket* for the proposition that "[w]hen (1) the Court decides a case and applies the (new) legal rule of that case to the parties before it, then (2) it and other courts must treat that same (new) legal rule as 'retroactive,' applying it, for example to all pending cases, whether or not those cases involve predecision events." *Id.* at 752. In addition to the fact that, as stated above, Coltec's constitutional claims were not still pending, Coltec conveniently omits the remainder of the *Reynoldsville Casket* holding that "new legal principles, even when applied retroactively, *do not apply to cases already closed*." *Id.* at 758 (citations omitted)(emphasis added). Indeed, as explained by the *Reynoldsville Casket* court, the "upshot" of that case is "the unsurprising fact that, as courts apply 'retroactively' a new rule of law to pending cases, they will find instances where that new rule, for well-established legal reasons, does not determine the outcome of the case." *Id.* at 758-59. One of those well-established legal reasons is the principle of "finality" that "limits the principle of retroactivity itself." *Id.* at 759. *See also James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 541

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to settle its case and voluntarily dismiss its constitutional claims, rather than litigate those claims to a final judgment, it is entitled to more favorable treatment, Coltec is mistaken. *See e.g. Virginia Lee*, 188 F.R.D. at 253 ("[n]ot surprisingly, [the rule of *Ackermann* applies equally well to the settlement scenario"); *U.S. Steel v. Fraternal Association of Steel Haulers*, 601 F.2d 1269, 1274 (3rd Cir. 1979)(when parties make "a free, calculated and deliberate choice to submit to an agreed upon decree rather than seek a more favorable litigated judgment, the burden under Rule 60(b) is perhaps even more formidable than had they litigated and lost.").

(1991)(opinion of Souter, J., joined by Stevens, J., announcing the judgment of the Court)("[o]f course, retroactivity in civil cases must be limited by the need for finality; once a suit is barred by res judicata or by statutes of limitation or repose, a new rule cannot reopen the door already closed.).

The rule of finality applies with equal force in cases raising constitutional claims. For example, in *Collins v. City of Wichita*, 254 F.2d 837 (10th Cir. 1958), the plaintiff challenged the constitutionality of the notice provisions of a condemnation statute. The plaintiff lost in the trial court and lost on appeal. In a later case involving the same statute, this Court held that the notice provisions of the statute were unconstitutional. As in this case, the plaintiff moved to vacate the judgment in light of this Court's decision. The district court denied plaintiff's motion for Rule 60(b)(6) relief, and the Tenth Circuit affirmed, explaining that "[litigation must end some time, and the fact that a court may have made a mistake in the law when entering judgment, or that there may have been a judicial change in the court's view of the law after its entry, does not justify setting it aside." *Id.* at 839. *See also Usery v. Bd. of Regents for Okla. Agric. & Mech. Colleges*, 22 Fed. R. Serv. 2d 1474 (E.D. Okla. 1976) (subsequent decision declaring unconstitutional the provisions of the Fair Labor Standards Act on which consent judgment was issued did not provide sufficient grounds for granting Rule 60(b)(6) relief with respect to the executed damage provisions of that judgment); *Marshall v. Board of Education*, 575 F.2d 417, 425 (3d Cir. 1978) (holding, even after this Court declared the FLSA unconstitutional as applied to state entities, that "a judgment at law for damages for past wrongs is inherently final and remains unaffected by a subsequent change in the law.") (internal quotation and citations omitted).

Consistent with these precedents, this rule of finality has been uniformly applied by other federal courts in Coal Act cases

seeking relief from final judgments following *Eastern Enterprises*. In four cases other than this one, "final judgment" operators that did not receive refunds from the Combined Fund sought relief under Rule 60(b), and in each case relief was denied. In *Blue Diamond*, 249 F.3d 519, for example, the court of appeals observed that allowing these companies to seek Rule 60(b) relief "would render our legal system's strong presumption in favor of the 'finality of judgments and termination of litigation' meaningless." *Id.* at 526 (citations omitted).

Similarly, in *Holland v. Virginia Lee*, the district court declined to reopen an earlier final order dismissing the case with prejudice after the company had settled with the Combined Fund:

> [C]hanges in the law inevitably lead to one or more parties from an earlier litigation feeling that they have been treated unfairly. As one district court recently noted, "[e]volving legal standards are part and parcel of the legal system in this country. As conditions change, so must some laws. That defendant suffered a judgment and paid damages pursuant to legal doctrine that has subsequently been overruled is an inevitable consequence."

188 F.R.D. at 255-56 (citations omitted). Likewise, in *Templeton Coal Co. v. Apfel*, No. TH93-158-C-T/H (S.D. Ind. 1999), the district court explained that "when the law is changed, many (if not most) times that change can be chalked up to notions of fairness or justice. If this were a reason for reopening all final judgments made under the prior law, then there would not be much left of the general rule that a subsequent change in the law will not alone justify Rule 60(b)(6) relief." (copy attached). *See also Lindsey Coal Mining Co.*

Liquidating Trust v. Apfel, No. 94-143 (W.D. Pa. 1999) (copy attached).

In considering Coltec's arguments for relief from its final judgment, the district court and the court of appeals were well-aware of the *Eastern Enterprises* decision. Contrary to Coltec's claim, these courts did not ignore that decision, but instead applied the principles of finality as expressed in this Court's precedents. The court reached the same result as federal courts have reached in all of the other cases in which companies have sought to reopen final judgments for the sole purpose of obtaining retrospective monetary relief after unsuccessful or settled challenges to the Coal Act. Like these other rulings, the court of appeals' decision here is correct, and further review is not warranted. In the words of the appellate court, Coltec "must bear the consequences of its informed, counseled and voluntary decision." (Pet. App. 20a).

B. Coltec's Notion That the Lower Courts Exceeded Their Authority Is Incorrect

In the court of appeals, Coltec unsuccessfully argued that the courts lacked "jurisdiction" to order Coltec to pay the money it had agreed to pay and that, in light of the Commissioner's voiding of its beneficiary assignments, Coltec had no legal liability at the time of the judgment. The court of appeals easily disposed of this argument and found Coltec's lengthy discussion of the courts' lack of authority "irrelevant" because Coltec's liability arises from its Stipulation and Agreement, not the Coal Act. (Pet. App. 24a-25a).

In its petition, Coltec has substantially modified its earlier argument. Rather, than argue a lack of jurisdiction, Coltec maintains that the courts below disregarded the exclusive delegation of authority to the Commissioner of Social Security and violated the separation of powers doctrine when

they refused to disturb the final judgment. This new twist on the same argument, however, fares no better.

According to Coltec, when the lower courts ordered Coltec to abide by its voluntary settlement agreement, they exceeded the bounds of judicial power by giving the Commissioner's determination prospective effect only.[8] The argument that the courts, by enforcing the agreement, have engaged in unconstitutional conduct necessarily rests on the premise that liability enforced by the lower courts arises from the Coal Act. This is incorrect and Coltec, again, misses the fundamental point.

As the court of appeals correctly held, the Combined Fund's entitlement to payment of premiums assessed up to the time of the *Eastern* decision arises from the parties' Escrow Agreement and Stipulation (as well as from the Order incorporating that Agreement and Stipulation), not directly from the Coal Act. (Pet. App. 24a-25a). Under the Stipulation, Coltec waived its constitutional defenses to liability in exchange for the right to seek a lower premium, a right that proved to be worth more than $150,000. SSA's letter says nothing about reopening final judgments and it cannot be seriously argued that SSA, in voiding the assignments made to Coltec following *Eastern*, intended to reach back and alter the terms of the deal that Coltec and the Combined Fund made. Moreover, this Court has clearly ruled that any attempt by SSA to do so would be an unconstitutional violation of the separation of powers doctrine.

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[8]Coltec concedes the final judgment against it has no prospective effect and that the instant dispute concerns only those premiums that accrued, and should have been deposited into the escrow account, prior to the Court's decision in *Eastern Enterprises*.

In *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 225-26 (1995), this Court reiterated that while Congress may enact retroactive legislation that applies to pending cases, it cannot require courts to reopen final judgments to provide relief to litigants. Citing numerous decisions beginning with *Hayburn's Case*, 2 Dall. 409, 1 L. Ed. 436 (1792), the *Plaut* Court stated that these cases "have uniformly provided fair warning" that a legislative attempt to revise or overturn a final judgment would exceed the powers of Congress.[9] These principles were affirmed again in *Miller v. French*, 530 U.S. 327, 343 (2000) which emphasized that Article III gives the federal judiciary "the power, not merely to rule on cases, but to *decide* them, subject to review only by superior courts in the Article III hierarchy," and that "Congress cannot retroactively command Article III courts to reopen final judgments." (citations omitted) (emphasis in original). *See also Clinton v. Jones*, 520 U.S. 681, 699-700 (1997) ("Congress may not exercise the judicial power to revise final judgments"); *Virginia Lee*, 188 F.R.D. at 256 (rejecting company's argument that by voiding assignments, SSA intended

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[9]To support its argument, Coltec relies upon several cases for the proposition that administrative agencies can correct their mistakes following a judicial determination. These cases are simply irrelevant. None of the cases cited by Coltec involve a situation, like the present one, in which a party voluntarily agreed to dismiss its claims with prejudice and a final judgment was thereafter ordered. Coltec has not cited any authority for the proposition that the separation of powers doctrine, or any doctrine for that matter, bars a court from enforcing settlement agreements where the agreement is approved by the court and incorporated into a final judgment. Such a lack of authority is not surprising, given this Court's repeated pronouncements that the exact opposite is true – SSA would have exceeded its authority if it had attempted to undo a final judgment of an Article III court.

to undo the settlement agreements and finding that SSA "was powerless to affect any order of [the] court."); *Templeton*, (finding that "it would be an unconstitutional violation of the separation of powers doctrine if the SSA attempted to require a court to open a final judgment.")(15a, copy attached).

Finally, Coltec's position is also belied by the fact that in the wake of the decision in this case, as well as the decisions in *Templeton*, *Virginia Lee*, and *Lindsey*, the "final judgment" operators took their concerns to the Legislative Branch, and, rather than disturb those final judgments, Congress provided some relief. In particular, in the Department of the Interior and Related Agencies Appropriations Act, 2001, Pub. L. No. 106-291, Title VII, § 701(a)(2), 2000 U.S.C.C.A.N. (114 Stat.) 922, 1024-25, Congress provided for the transfer to the Combined Fund of an additional $2.2 million in interest earned by the Abandoned Mine Land Reclamation Fund established under the Surface Mining Control and Reclamation Act of 1977). *See* 30 U.S.C. § 1232(h). This $2.2 million was earmarked to be used to provide refunds, on a pro rata basis, to companies that satisfied certain criteria, including the requirement of actual payments to the Combined Fund.

This money has now been distributed to the "final judgment" companies. Coltec, however, was not eligible for such a refund because it never "paid" any premiums, either to the Combined Fund or into the escrow account.

The congressional resolution of this issue thus provides further support for the proposition that Coltec is not entitled to the extraordinary remedy of reopening a final judgment and that Congress recognized the exclusive power of the judiciary to enforce the final judgments before them, even after the Commissioner had declared the beneficiary assignments void. Nothing in the Constitution or this Court's case law interpreting it suggests a different result.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

IN THE UNTIED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LINDSEY COAL MINING COMPANY LIQUIDATING TRUST by its Liquidating Trustees H. Robert Lasday and Elaine K. Light Plaintiffs,	)	
-vs-	)	Civil Action No. 94-143
KENNETH S. APFEL, Commissioner of Social Security, et al., Defendants.	)	
AMBROSE, District Judge.	)	

MEMORANDUM OPINION
and
ORDER OF COURT

This declaratory judgment action was brought by Plaintiff in 1994, seeking judicial review of a final action of the Commissioner of Social Security, made in 1993, assigning Plaintiff liability for twenty-three (23) of its former miners (or their dependents or beneficiaries) pursuant to the Coal Act, 26 U.S.C.A. § 9701-9722. Under the assignment Plaintiff was required to make payments to a multi-employer benefit fund established as a result of negotiations and agreements entered into between members of the Central Pennsylvania Coal Producers Association and the union representing Plaintiff's miners.

Plaintiff disputed these obligations under the Coal Act in this lawsuit, arguing that it was not subject to the provisions of the Coal Act and that even if it was subject to the Act, the Act was unconstitutional.

I rejected Plaintiff's arguments and granted summary judgment in favor of Defendants. The Court of Appeals affirmed. Plaintiff did not file an appeal of that decision.

Thereafter, the Supreme Court of the United States in *Eastern Enterprises v. Apfel*, 524 U.S. 498, 118 S.Ct. 2131 (1998) held that the Coal Act, as applied to a party similarly situated as Plaintiff, was unconstitutional.

One year after the Supreme Court's decision, Plaintiff has filed a Motion for Relief from Judgment pursuant to Federal Rule of Civil Procedure 60(b)(6) (Docket No. 52). Federal Rule of Civil Procedure 60(b)(6) provides: "On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons...(6) any other reason justifying relief from the operation of the judgment." Plaintiff also requests an indefinite stay of any action on its Motion for Relief pending development of similar motions by other similarly situated Plaintiffs requesting relief from judgment in other "Coal Act" cases. Specifically, Plaintiff avers that a United States District Court has granted a motion to vacate its original judgment in a similar case under Rule 60(b)(6) in *Blue Diamond Coal Co. v. Shalala*, No.3:93-cv-473 (E.D.Tenn., November 4, 1998), and an interlocutory appeal of that order is pending. Additionally, Plaintiff alleges that motions to vacate judgments have been filed in similar circumstances in *Templeton Coal Co. and Davon, Inc.*, No. TR 93-198-c-T/H (S.D. Ind.).

This is not the first time this issue has come before this

Court. In *Coltec Industries, Inc. v. Hobgood* ("Coltec"), 184 F.R.D. 60, 61 (W.D. Pa. Jan. 29, 1999), Judge Smith denied a motion to vacate under Rule 60(b)(6) in another Coal Act case. The facts in *Coltec* were different from those present here in that the Plaintiff in *Coltec* voluntarily dismissed its constitutional claims in exchange for Defendant's agreement to allow Plaintiff to amend its complaint to state a claim challenging how their Coal Act contributions were calculated. Thus, Plaintiff made a deal to give up constitutional claims for the right to pursue miscalculation claims.

In discussing the *Coltec* Plaintiff's Motion brought under Rule 60(b)(6),[1] Judge Smith refused to grant the Motion. Noting that relief under Rule 60(b)(6) is extraordinary and may be granted only on a showing of exceptional circumstances (*In re Fine Paper Antitrust Litig.*, 840 F.2d 188, 194 (3d Cir. 1998)), Judge Smith held that "(a) change in the decisional law after judgment is entered, however, is not considered exceptional and does not justify relief" (citations omitted).

That the facts and procedural history herein differ from those in *Coltec* is of no import to the outcome. In the interest of consistency and because I find the reasoning of Judge Smith to be persuasive, I find that Plaintiff's Motion for Relief from Judgment and Request for a Stay should be denied as Plaintiff has not presented the extraordinary and exceptional type of facts justifying relief under Federal Rule of Civil Procedure 60(b)(6).

DATE FILED: August 4, 1999

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[1]The Plaintiff in *Coltec* also requested relief under Rule 60(b)(5). That request was also denied.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

TEMPLETON COAL COMPANY, INC., SHERWOOD-TEMPLETON COAL COMPANY, INC., and PRINCETON MINING COMPANY, Plaintiffs,	)	
vs.	)	TH 93-158-C-T/H
KENNETH S. APFEL, Commissioner, Social Security Administration, and UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND, Defendants.	)	

ENTRY DENYING PLAINTIFFS' MOTION FOR RELIEF FROM JUDGMENT

This matter comes before the court on the Motion for Relief from Judgment filed by Plaintiffs, Templeton Coal Company, Inc., Sherwood-Templeton Coal Company, Inc., and Princeton Mining Company, pursuant to Federal Rule of Civil Procedure 60(b)(6).[1] Plaintiffs filed this suit on

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[1]A Rule 60(b)(6) motion has been filed in another case in this court, *Davon Inc. v. Apfel*, No. TH 93-198-C-T/H. The Rule 60(b)(6) motions in these two cases were filed

September 2, 1993,[2] seeking a declaratory judgment that the "super-reach back" provisions of the Coal Industry Retiree Health Benefit Act of 1992 ("Coal Act"), 26 U.S.C. §§ 9701 *et seq.*, were unconstitutional as applied to them. The Coal Act created Defendant United Mine Workers of America Combined Benefit Fund ("Combined Fund") and provided that Defendant Kenneth S. Apfel, Commissioner of the Social Security Administration ("SSA"), would assign a portion of the Combined Fund beneficiaries to a group of former coal mining companies that last had collective bargaining relationships with the United Mine Workers prior to 1974. Plaintiffs are such companies, known as "super-reach back companies," and were assigned Combined Fund beneficiaries.

On April 4, 1995, this court granted Defendants' motions for summary judgment, deciding that the challenged provisions of the Coal Act, as applied to Plaintiffs, did not violate the takings or due process clauses of the Fifth Amendment. *See Templeton Coal Co., Inc. v. Shalala,* 882 F. Supp. 799 (S.D. Ind. 1995). The Seventh Circuit affirmed, and the Supreme Court denied Plaintiffs' petitions for certiorari. *See Davon, Inc. v. Shalala,* 75 F.3d 1114 (7th Cir.), *cent. denied,* 519 U.S. 808 (1996). In 1998, the Supreme Court decided *Eastern Enterprises v. Apfel,* 524 U.S. 498 (1998), holding that the "super-reach back"

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jointly and the discussion in this Entry is equally applicable to the motion filed in *Davon. Inc.* However, the formal ruling on Davon's motion will be issued in a separate Entry under the *Davon. Inc.* caption.

[2]Davon filed its suit November 3, 1993.

provisions of the Coal Act were unconstitutional as applied to the plaintiff in that case. Four justices found the provisions to be an unconstitutional taking, one justice found them to violate the due process clause, and four justices dissented.[3]

Between November 1993 and July 1998, Plaintiffs paid premiums to the Combined Fund in the following amounts: Templeton Coal Co.--$594,518; Sherwood--Templeton Coal Co.--$34,453; Princeton Mining Co.--$1,165,333.[4] After the *Eastern Enterprises* decision, the SSA sent letters to the Plaintiffs, and other "super-reach back companies," stating that "[p]ursuant to the ... *Eastern Enterprises* [decision], the assignments to [the "super-reach back companies"] under the provisions of the [Coal Act] are void." (Patton Aff., Ex. D; Wulf Aff., Ex. C; Smith Aff., Ex. C; Mot. of Pls.' for Relief from J., Ex. 4 at 5.) This action effectively relieved all "super-reach back companies," including the Plaintiffs, of any future obligations to make payments under the Coal Act.

The Combined Fund then began refunding premiums previously paid by some of the "super-reach back companies"; the refunds were retroactive and in full, covering all premiums paid. However, the "super-reach back companies" who had

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[3]Background facts surrounding the Coal Act and the challenges to its constitutionality by "super-reach back companies" are fully set forth in the opinions by the Supreme Court in *Eastern Enterprises,* the Seventh Circuit in *Davon, Inc.,* and this court in *Templeton Coal Co.*

[4]Davon, Inc. paid $1,048,174.

binding judgments entered against them (such as the Plaintiffs), have not received any refunds.[5]

Armed with the decision in *Eastern Enterprises*, the Plaintiffs return to this court seeking relief, pursuant to Rule 60(b)(6), from the April 4, 1995 judgment. Presumably Plaintiffs' goal is to re-open this case in order to demand a refund of the premiums they paid to the Combined Fund before the *Eastern Enterprises* decision.

Rule 60(b) of the *Federal Rules of Civil Procedure* authorizes relief from a court's judgment or order based upon a variety of grounds, including mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud or misconduct by the opposing party, lack of jurisdiction of the issuing court, or prior satisfaction or release of the judgment. Rule 60(b)(6) adds a residual category authorizing relief for "any other reason justifying relief from the operation of the judgment."

"Rule 60(b) relief is an extraordinary remedy and is granted only in exceptional circumstances." *Cincinnati Ins. Co. v. Flanders Elec. Motor Serv., Inc.*, 131 F.3d 625, 628 (7th Cir. 1997) (citing *Dickerson v. Board of Educ. of Ford Heights, Ill.*, 32 F.3d. 1114, 1116 (7th Cir. 1994)). An "overarching concern" of Rule 60(b) is "the need for the finality of judgments." *Id.* "Rule 60(b) sets a 'higher value on

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[5]Except as noted, the Defendants have not disputed these factual assertions; accordingly, the court accepts them as true in deciding Plaintiffs' Motion. *See Klapprott v. United States*, 335 U.S. 601, 603-04 (1949) (accepting as true undenied factual allegations in a Rule 60(b)(6) motion).

the social interest in the finality of litigation.'" *Id.* (quoting *Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673, 682 (7th Cir. 1983)).

Rule 60(b)(6) "vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." *Klapprott v. United States*, 335 U.S. 601, 615 (1949) (allowing a naturalized citizen to set aside a default judgment of denaturalization, upon a showing that he had been sick, indigent, and imprisoned at the time the judgment had been entered). "In a rule already limited in application to extraordinary circumstances, proper resort to this 'catch all' provision is even more highly circumscribed." *Provident Sav. Bank v. Popovich*, 71 F.3d 696, 700 (7th Cir. 1995) (citing *Pantoja v. Texas Gas & Transmission Corp.*, 890 F.2d 955, 960 (7th Cir. 1989) (Rule 60(b)(6) is to be applied only in "the most extraordinary of circumstances.")).

"[A] change in the applicable law after entry of judgment does not, by itself, justify relief under 60(b)." *McKnight v. United States Steel Corp.*, 726 F.2d 333, 336 (7th Cir. 1984) (citing *DeFilippis v. United States*, 567 F.2d 341, 343 n.5 (7th Cir. 1977) ("[C]ourts are generally agreed that a change in the law after entry of judgment does not alone justify relief under (b)(6).")); *see also Agostini v. Felton*, 521 U.S. 203, 239 (1997) ("Intervening developments in the law by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6)."); RESTATEMENT (SECOND) OF JUDGMENTS § 73 cmt. c (1982) (It is a very unsound policy" to apply Rule 60(b) "where a subsequent judicial decision changes the law that was applied in reaching an earlier judgment."). This rule applies even if the changed precedent is from the Supreme

Court. *See McKnight*, 726 F.2d at 335-36; *DeWeerth v. Baldinger*, 38 F.3d 1266, 1273 (2d Cir. 1994) ("This principle [that a change in decisional law does not itself warrant Rule 60(b)(6) relief] ... applies in federal cases where the Supreme Court has changed the applicable rule of law.") (citing *Picco v. Global Marine Drilling Co.*, 900 F.2d 846, 851 (5th Cir. 1990) (holding that the district court abused its discretion in granting Rule 60(b)(6) relief based upon a Supreme Court decision that changed the law)); *Bailey v. Ryan Stevedoring Co., Inc.*, 894 F.2d 157, 160 (5th Cir. 1990) (citing *McKnight* and *Title v. United States*, 263 F.2d 28, 31 (9th Cir. 1959)); *Travelers Indem. Co. v. Sarkisian*, 794 F.2d 754, 757 (2d Cir.), *cert. denied*, 479 U.S. 885 (1986).

Further, this rule applies when the underlying judgment involves a constitutional claim.[6] *See Batts v.*

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[6]Plaintiffs assert that "[t]he policy favoring the finality of judgments is not strong when developing federal constitutional rights are involved." (Mem. of Pls. in Supp. of Their Mots. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) at 13.) However, the cases cited by Plaintiffs are inapposite because they all involve *prospective* application of past judgments. *See Whitcomb v. Davis*, 403 U.S. 124 (1971); *Parnell v. Rapides Parish Sch. Bd.*, 563 F.2d 180, 185 (5th Cir. 1977); 18 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE §131.24[4] (3d ed. 1998) ("Some cases involving continued or threatened violation of constitutional rights have recognized an exception to the general rule that a change in the law will not avoid claim preclusion."). In this case, it is undisputed that this court's judgment will have no prospective effect; in other words, regardless of the result of this Rule (60)(b)(6) motion,

Tow-Motor Forklift Co., 66 F.3d 743, 749 (5th Cir. 1995) ("Changes in decisional law based on constitutional principles are not of themselves extraordinary circumstances sufficient to justify Rule 60(b)(6) relief.") (citing *Collins v. City of Wichita*, 254 F.2d 837 (10th Cir. 1958)). In *Collins*, a plaintiff challenged the constitutionality of a Kansas statute relating to the notice landowners received in condemnation actions. The plaintiff lost at trial and on appeal and the U.S. Supreme Court denied his petition for certiorari. Over a year later, in a different case, the Supreme Court held that the notice provisions of the same Kansas statute were unconstitutional. The plaintiff in the first action sought relief from the adverse judgment in light of the new Supreme Court case. The Tenth Circuit affirmed the district court's denial of the motion, explaining that "[l]itigation must end some time, and the fact that a court may have made a mistake in the law when entering judgment, or that there may have been a judicial change in the court's view of the law after its entry, does not justify setting it aside." *Collins*, 254 F.2d at 839.

Notwithstanding this caselaw, Plaintiffs move for relief from judgment in light of *Eastern Enterprises*. In support of their Rule 60(b)(6) motion, Plaintiffs present three main arguments: (1) the basis of the *Eastern Enterprises* decision, notions of fairness and justice, fulfills the standard for granting Rule 60(b)(6) relief; (2) after the *Eastern Enterprises* decision, the SSA "voided" the assignment of beneficiaries to Plaintiffs, meaning that the assignments should be treated as having never occurred; and, (3) the equities weigh heavily in favor of granting Rule 60(b)(6) relief.

Plaintiffs will have no future obligation to make payments under the Coal Act.

1. Basis of the *Eastern Enterprises* Decision

Plaintiffs first argue that the *Eastern Enterprises* decision should not be treated as "merely a subsequent judicial decision changing the law," because the decision was based upon "fundamental notions of justice" and "substantial questions of fairness." (Reply Br. of Pls. in Supp. of Mot. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) ("Reply Br. of Pls.") at 6 (quotations omitted).)

However, Plaintiffs fail to cite to any case holding, or even intimating, that a subsequent change in the law will alone warrant Rule 60(b)(6) relief if the subsequent change was made on the grounds of "notions of justice" and/or "questions of fairness."[7] This court is hesitant to adopt such an exception to the general rule (that a subsequent change in the law will not alone warrant Rule 60(b)(6) relief) because such an exception would threaten to eviscerate the rule.

In many (if not most) cases, a losing litigant could fashion an argument that the subsequent change in the law is based upon general notions of fairness. For example, in *Tomlin v. McDaniel,* 865 F.2d 209 (9th Cir. 1989), the plaintiffs 42 U.S.C. § 1983 action was dismissed by the district court as time barred because the court held that a

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[7]These quotations come from the plurality's opinion in *Eastern Enterprises. See* 118 S.Ct. at 2151, 2152. Justice Kennedy's concurrence (which was necessary to form a majority) is not so strongly worded. However, the court assumes for the sake of argument that the Supreme Court's holding in *Eastern Enterprises* is based upon "notions of justice" and "questions of fairness."

one-year statute of limitations applied to such actions. The plaintiff lost on appeal and the Supreme Court denied his petition for certiorari. Subsequently, the Supreme Court held that the relevant state's statute of limitations applicable to personal injury actions was also applicable to section 1983 actions. *See Wilson v. Garcia, 471 U.S.* 261, 276 (1985). Because the plaintiffs section 1983 action had been filed within twenty-one months of its accrual, and the relevant state's statute of limitations for personal injury actions was two years, under *Wilson,* the plaintiffs suit would not have been dismissed as being untimely. The Ninth Circuit affirmed the district court's denial of Rule 60(b)(6) relief. *See Tomlin,* 865 F.2d at 211. As is the case with the *Eastern Enterprises* decision, the Supreme Court's *Wilson* decision could readily be said to be based upon general notions of justice. For instance, the Court said the following:

> The rights enforceable under § 1983 include those guaranteed by the Federal Government in the Fourteenth Amendment: that every person within the United States is entitled to equal protection of the laws and to those "fundamental principles of liberty and justice" that are contained in the Bill of Rights and "lie at the base of all our civil and political institutions." These guarantees of liberty are among the rights possessed by every individual in a civilized society, and not privileges extended to the people by the legislature.
>
> * * *
>
> The characterization of all § 1983 actions as involving claims for personal injuries minimizes the risk that the

> choice of a state statute of limitations would not fairly serve the federal interests vindicated by § 1983.

Wilson, 471 U.S. at 278-79 (citations omitted).

And in *Collins v. City of Wichita*, 254 F.2d 837 (10th Cir. 1958), see recitation of *Collins'* facts above, the basis of the subsequent Supreme Court decision, which invalidated the same statute unsuccessfully challenged by the plaintiff in *Collins*, was the due process clause. *See Walker v. Hutchinson City*, 352 U.S. 112 (1956) (holding that the notice provisions of the statute at issue did not measure up to the requirements of the due process clause of the Fourteenth Amendment). A "fairness" argument could easily be fashioned from a case finding a statute violative of the due process clause. However, in *Collins*, as in *Tomlin*, the court of appeals affirmed the district court's denial of Rule 60(b)(6) relief.

It should be noted that neither *Collins* nor *Tomlin* discuss the issue of whether the basis of the subsequent change in the law can (or should) provide a sufficient basis for granting Rule 60(b)(6) relief. But the point is that when the law is changed, many (if not most) times that change can be chalked up to notions of fairness or justice. If this were a reason for reopening all final judgments made under the prior law, then there would not be much left of the general rule that a subsequent change in the law will not alone justify Rule 60(b)(6) relief.

2. "Voided" Assignments

Plaintiffs next argue that Rule 60(b)(6) relief is warranted because after the *Eastern Enterprises* decision, the SSA "voided" the assignment of beneficiaries to Plaintiffs. As indicated above, after the *Eastern Enterprises* decision, the SSA sent letters to the Plaintiffs, and other "super-reach back companies," stating that "[p]ursuant to the ... *Eastern Enterprises* [decision], the assignments to [the "super-reach back companies"] under the provisions of the [Coal Act] are void." (Patton Aff., Ex. D; Wulf Aff., Ex. C; Smith Aff., Ex. C; Mot. of Pls.' for Relief from J., Ex. 4 at 5.) It is clear that this action effectively relieved all "super-reach back companies," including the Plaintiffs, of any *future* obligations to make payments under the Coal Act. However, Plaintiffs also contend that by using the word "void" in the letter, the SSA *retroactively* undid the assignments, and therefore the assignments should be viewed as having never occurred. "And if an act did not legally occur, it is metaphysically--and equitably-impossible for the consequences of such an act to remain in force." (Reply Br. of Pls. at 7.) Therefore, Plaintiffs argue, this is an exceptional circumstance warranting Rule 60(b)(6) relief.

Since the SSA opposes Plaintiffs' Motion for Relief from Judgment, it seems reasonable to conclude that when the SSA used the word "void," the SSA did not *intend* for it to provide an avenue for opening the judgment. (Def. Apfel's Mem. of Law in Opp'n to Pls.' Mot. for Relief from J. at 6 (indicating that in 'voiding' the assignments, the SSA took "action that effectively relieved] plaintiffs of further obligations to make payments under the [Coal Act]").) Further, Plaintiffs provide no case holding, or even intimating, that a statement made by an opposing party--after judgment

becomes final and after the subsequent change in the law--can constitute an exceptional circumstance warranting Rule 60(b)(6) relief. Even if the SSA intended to retroactively cancel the assignments, and even if the SSA supported this Rule 60(b)(6) motion and strongly believed that the Combined Fund should refund all the money the Plaintiffs paid, it is difficult to see how this really matters. Under the Coal Act's statutory scheme, the SSA assigns the beneficiaries and the Combined Fund collects and distributes the money--no party has argued that the SSA has any authority to refund premiums. Moreover, it would be an unconstitutional violation of the separation of powers doctrine if the SSA attempted to require a court to open a final judgment. See *Holland v. Virginia Lee Co.*, 188 F.R.D. 241, 256 (W.D. Va. 1999) (rejecting a similar argument); *cf. Plaut v. Spendthrift Farm*, 514 U.S. 211 (1995) (holding that a federal statute which required courts to open certain judgments violated constitutional separation of powers principles).

3. Equities

Finally, Plaintiffs argue that the equities weigh heavily in favor of granting their Rule 60(b)(6) motion.

First, Plaintiffs contend that the Combined Fund's only claim of right to the premiums paid by Plaintiffs is this court's judgment, which, in light of *Eastern Enterprises*, is not correct. Therefore, Plaintiffs argue, "denying this motion would ... affirm an unconstitutional act [and] allow the Fund to retain over $2.8 million of Plaintiffs' money to which the Fund has no legitimate claim." (Mem. of Pls. in Supp. of Their Mots. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) at 11-12.) The problem with this argument is that it (or some

variation of it) could be made any time there is a subsequent change in the law.

Next, Plaintiffs argue that they "are being punished for trying to vindicate constitutional rights that were ultimately validated by the Supreme Court in *Eastern Enterprises*." (Mem. of Pls. in Supp. of Their Mots. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) at 10.) Indeed, Plaintiffs reason that had they and other companies not first challenged the constitutionality of the "super reachback" provisions of the Coal Act, the Supreme Court would not have granted certiorari in *Eastern Enterprises,* and therefore, "[w]ithout litigation such as plaintiffs', there would not be today a Supreme Court ruling to clarify this constitutional issue." (*Id.* at 11 n. 6.)

Plaintiffs may be correct that their litigation was in part responsible for the Supreme Court's granting of certiorari in *Eastern Enterprises*, although given the discretionary nature of the Supreme Court's certiorari powers in such cases, this would be a highly speculative basis for granting Rule 60(b)(6) relief. Further such an argument must be tempered by the need for finality in litigation. In *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529 (1991), Justice Souter, announcing the judgment of the Court, addressed the issue of "litigants ... freeload[ing] on those without whose labor the new rule would never have come into being." *Id.* at 541 (Souter, J., announcing the judgment of the Court, joined by Stevens, J.). Justice Souter answered the question, "[W]hy should someone whose failure has otherwise become final not enjoy the next day's new rule, from which victory would otherwise spring?" with the following discussion:

> Insofar as equality drives us, it might be argued that the new rule should be applied to those who had toiled and failed, but whose claims are now precluded by res judicata; and that it should not be applied to those who only exploit others' efforts by litigating in the new rule's wake. . . . .
>
> While those whose claims have been adjudicated may seek equality, a second chance for them could only be purchased at the expense of another principle. Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of that contest, and that matters once tried shall be considered forever settled as between the parties. Finality must thus delimit equality in a temporal sense, and we must accept as a fact that the argument for uniformity loses force over time.

Id. at 542 (quotation and citations omitted).

Next, Plaintiffs argue that they "are being penalized for obeying the law while others are rewarded for disobeying it." (Mem. of Pls. in Supp. of Their Mots. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) at 11.) They reach this conclusion because "super-reachback companies" who did not pay the premiums and did not bother to sue will now never be required to pay. In contrast, Plaintiffs paid the premiums and dutifully pursued their rights through the legal system.

Defendants respond to this argument by citing *Cincinnati Insurance Co. v. Flanders Electric Motor Service, Inc.*, 131 F.3d 625 (7th Cir. 1997). In that case, Cincinnati Insurance, an insurer, brought a declaratory judgment action

in federal court against Flanders, its insured, seeking a declaration that the pollution exclusion in the insurance policy at issue precluded coverage for the cleanup of a contaminated site. The district court decided in favor of Cincinnati Insurance on the as-yet-undecided Indiana state law issue, and the Seventh Circuit affirmed. A year and a half later, the Indiana Supreme Court considered the same issue in two different cases, and decided that the pollution exclusion clause did not preclude coverage. The district court denied Flanders' motion for relief from judgment pursuant to Rule 60(b)(6) and Flanders appealed. The Seventh Circuit considered Flanders' argument that, in light of the new Indiana Supreme Court cases, other insured parties were receiving insurance coverage for pollution *at the same site,* while Flanders was not. Therefore, Flanders argued, "it [wa]s being inequitably treated vis-a-vis some other 'potentially responsible parties.'" *Id.* at 629. The Seventh Circuit affirmed the denial of Rule 60(b)(6) relief, noting that "[a]ny change in the law may leave one or more parties of earlier litigation with the feeling that they have been treated unfairly, but this must be balanced with the need for finality of litigation." *Id.* at 630.

The "fairness" argument advanced by Flanders appears to have been virtually the same as that now advanced by Plaintiffs--just as the only thing that distinguished Flanders from the other "potentially responsible parties" was the fact that a final judgment had been issued against him before the controlling Indiana Supreme Court decision, so the only thing that distinguishes Plaintiffs from the other "super-reach back companies" is the fact that a final judgment had been issued against them before the *Eastern Enterprises* decision.

The court notes, however, the holding of *Cincinnati Insurance* was that the district court did not abuse its

discretion in denying Flanders' Rule 60(b)(6) motion; the Seventh Circuit espoused no opinion on the issue of whether it was within the range of the district court's discretion to *grant* the motion. But it is clear from *Cincinnati Insurance* that "the need for finality" is worth substantial weight when balanced against such a fairness argument.

Plaintiffs seem to dispute that there is a need for finality in this case; they argue that "[t]here are no compelling issues of finality here." (Mem. of Pls. in Supp. of Their Mots. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) at 12.) They argue that "only a few other companies are situated in Plaintiffs' exceptional circumstances, so the Court need not fear the opening of litigation floodgates by granting relief here."[8] (Reply Br. of Pls. at 8-9.)

When *Cincinnati Insurance* and other Rule 60(b)(6) cases speak of balancing the movant's arguments with the need for finality, these cases speak of "finality" in a larger sense than Plaintiffs do. For instance, there is no indication that in *Cincinnati Insurance*, either the district court or the Seventh Circuit was concerned about a rush of Rule 60(b)(6) motions from other insureds who had litigated and lost on the identical pollution-exclusion issue. Instead, such cases are concerned with the "'social value in the finality of litigation.'" *See Cincinnati Ins.*, 131 F.3d at 628 (quoting *Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673, 682 (7th Cir. 1983)).

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[8]It is worth noting that in one sense, this court need never concern itself with one of its decisions 'opening the litigation floodgates' since a district court's decision does not have precedential authority. *See Howard v. Wal-Mart Stores, Inc.*, 160 F.3d 358, 359 (7th Cir. 1998).

The cases make clear that the principle of finality extends well beyond cases construing the Coal Act and looms as a heavy counter-balance to any policy arguments a Rule 60(b)(6) movant may make.

In *United States v. Keane*, 852 F.2d 199 (7th Cir. 1988), *cert. denied*, 490 U.S. 1084 (1989), the court discussed the social value of finality in litigation in the context of a criminal case:

> Everyone is entitled to a full and fair opportunity for litigation, and no one is entitled to multiple opportunities. The decision the second time around is not necessarily more accurate than the first and comes at great cost to legitimate interests in finality--not only the interests of the prevailing party but also the interests of the judicial system. Rules of preclusion induce parties to concentrate their energies and resources on getting things right the first time. The prospect of relitigating would reduce the effective stakes of the first case, leading to an erosion in accuracy. From a systemic perspective, time consumed relitigating one case subtracts from the time available to litigate others. Litigants must wait in a longer queue, receive less judicial attention, or both. It would not be possible to stop with two decisions; if hindsight shows the error of the first decision, it may show error of the second in turn. The high costs of multiple decisions in the same case have led the Supreme Court to conclude that a party does not get a second chance even if an intervening decision of that Court makes pellucid the error of the original decision. *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394 (1981). Given *Moitie*, there can

> be no doubt that if in a civil case Keane had been found liable for fraud and assessed $27,000 as damages, a later decision of the Supreme Court rejecting the reasoning used in his case would not have entitled him to a fresh adjudication.

Id. at 201-02 (citation omitted) (holding that the writ of error coram nobis is unavailable unless "the prisoner is [still] suffering civil disabilities unique to criminal convictions," and a fine and/or the reputational injury from having a conviction on the prisoner's record does not suffice).

And in *Norgaard v. DePuy Orthopaedics, Inc.*, 121 F.3d 1074 (7th Cir. 1997), the court elaborated:

> In *United States v. Keane*, . . . we held that a reinterpretation of existing law did not justify reopening the monetary aspects of criminal judgments (that is, fines). Only ongoing custody or future collateral consequences support post-judgment relief, we held. Collateral review has always been allowed more freely in criminal than in civil cases. If financial aspects of criminal judgments do not change when understanding of the law changes, it is hard to see why financial aspects of civil judgments should change. Even when imprisonment is at issue, most changes of law do not affect judgments that became final before the change occurred. It would be topsy-turvy, both historically and prudentially, to permit a change of law to upset a civil money judgment more readily than a criminal judgment, which affects liberty. Rule 60(b)(5) permits the revision of an ongoing decree, such as an injunction, when a prior judgment upon which it is based has been reversed or otherwise

> vacated, or it is no longer equitable that the judgment should have prospective application", which strongly implies that a money judgment (or a no-money judgment) is not to be upset just because the law on which it was founded has changed.

Norgaard, 121 F.3d at 1077 (citations omitted).

The landscape of *Cincinnati Insurance, Keane* and *Norgaard* shows the importance of finality in the law, especially when the only justification for reopening a final judgment is the recovery of money paid as a result of the judgment.[9] Plaintiffs offer nothing to rebut this caselaw. However, Plaintiffs do present three additional arguments in support of their overall argument that the "equities" support the granting of Rule 60(b)(6) relief in this case.

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[9]Plaintiffs argue at one point that there are "no issues of finality here" because the judgment in this case "was for declaratory relief and contains no money judgment." (Mem. of Pls. in Supp. of Their Mots. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) at 12.) However, it is abundantly clear from Plaintiffs' briefs that the only reason they seek Rule 60(b)(6) relief is to pave the way for the recovery of the premiums they paid to the Combined Fund. If Plaintiffs were seeking Rule 60(b)(6) relief for the sole reason of obtaining the moral satisfaction that they had been correct in their litigation position, then their Rule 60(b)(6) motion could be rejected in far less space than is consumed by this Entry. *Cf. Keane*, 852 F.2d at 204 (holding that a defendant may not reopen a criminal case simply to eliminate a criminal conviction from his record and "bask in the satisfaction of having his position vindicated")

Plaintiffs argue that Rule 60(b)(6) relief is justified because they paid such a large amount of money to the Combined Fund before the *Eastern Enterprises* decision (collectively, just over $2.8 million). However, this hardly appears to be a principled method of determining Rule 60(b)(6) motions. What would be the threshold amount in any given Rule 60(b)(6) motion? For example, Princeton Mining Co. paid $1,165,333. Is the threshold $1,000,000? But Templeton Coal Co. paid $594,518; so is the threshold $500,000? But Sherwood-Templeton Coal Co. paid $34,453. In order for Plaintiffs' argument to include all of the Plaintiffs (and there is no indication that Plaintiffs intend anything different), the threshold must be "only" $34,453. And if the amount of money is to be a determining factor, then perhaps the court should consider the amount of money in relation to the party's net worth. In which case, perhaps an unsuccessful social security claimant is more worthy of past benefits after a subsequent change in the caselaw than any of the Plaintiffs here.

Plaintiffs next argue that relief is warranted because Congress has provided a method for the Combined Fund to obtain reimbursement of refunds the Combined Fund pays due to the *Eastern Enterprises* decision. However, this argument is similarly unpersuasive. First of all, as a factual matter, it appears that the Combined Fund is not entitled to reimbursement for any refunds of premiums paid before September 30, 1995 (the Coal Act became effective in 1993).[10] And even as to the refunds that would be

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[10]The Combined Fund makes this factual argument in its brief, *see* Mem. of Def. Trustees of the UMWA Combined Benefit Fund in Opp'n to Pls.' Mot. for Relief from J. at 27

reimbursed, simply because the reimbursement would come from a governmental entity does not mean that there is a lowered interest in finality or that the money somehow is less important than if it were to be paid from some other source. And finally, Plaintiffs have failed to demonstrate how the fact that the Combined Fund may obtain reimbursement for some refunded money is relevant to a Rule 60(b)(6) motion. *See Holland v. Virginia Lee Co.*, 188 F.R.D. 241, 256 (W.D. Va. 1999) (rejecting a similar argument: "[A]n effort to isolate alternative sources of revenue which would compensate for the payment of a refund does not help Virginia Lee's case here. The current fitness of the funding mechanism established by the statutory construct is simply not relevant.").

Finally, Plaintiffs' Rule 60(b)(6) motion is not the only such motion to be filed in the wake of *Eastern Enterprises.* Three courts have denied Rule 60(b)(6) relief to "super-reachback companies" who unsuccessfully challenged the constitutionality of the Coal Act and whose judgments became final before the Supreme Court's *Eastern Enterprises* decision, *see Lindsey Coal Mining Co. Liquidating Trust v. Apfel,* No. 94143 (W.D. Pa. August 4,1999); *Holland v. Virginia Lee Co.,* 188 F.R.D. 241 (W.D. Va. 1999); *Coltec Indus., Inc. v. Hobgood,* 184 F.R.D. 60 (W.D. Pa. 1999), while one court has granted Rule 60(b)(6) relief, *see Blue Diamond Coal Co. v. Shalala,* No. 3:93-CV473 (E.D. Tenn. November 4, 1998). Plaintiffs distinguish the cases denying Rule 60(b)(6) relief on the grounds that either the coal company did not petition the Supreme Court for certiorari

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(citing 30 U.S.C. Section 1232(h)), and Plaintiffs did not dispute it in their Reply brief.

(Lindsey Coal Mining Co.), or settled its claim before exhausting its appeals *(Virginia Lee Co., Coltec Industries)*.

By contrast, Plaintiffs argue that *Blue Diamond Coal*, wherein the court granted Rule 60(b)(6) relief, is the only truly analogous case to this one. Even if that were true, a decision from a fellow district court is only as persuasive as the reasoning it employs. *See, e.g., Bethune Plaza, Inc. v. Lumpkin*, 863 F.2d 525, 532 (7th Cir. 1988). The court in *Blue Diamond Coal* relied upon four cases in granting the "super-reach back" company's Rule 60(b)(6) motion: *Gondeck v. Pan American World Airways, Inc.*, 382 U.S. 25 (1965); *Pierce v. Cook & Co., Inc.*, 518 F.2d 720 (10th Cir. 1975); *First American National Bank of Nashville v. Bonded Elevator, Inc.*, 111 F.R.D. 74 (W.D. Ky. 1986); and *Batts v. Tow-Motor Forklift Co.*, 66 F.3d 743 (5th Cir. 1995).

The first two cases *(Gondeck* and *Pierce)* deal with "common disaster" situations in which different legal standards were applied to victims of the same automobile accident. In *McGeshick v. Choucair*, 72 F.3d 62 (7th Cir. 1995), the Seventh Circuit discussed *Gondeck*, and indicated that the "most probable" reading of the case is that it should be limited to "common disaster" situations:

> In determining the appropriate balance between these countervailing factors of correcting a judicial course of action that has proven to have been improvidently chosen and of preserving finality in judicial decision-making, courts have been guided by a variety of considerations. The Supreme Court has confronted the issue on two occasions. In *Gondeck v. Pan American World Airways*, 382 U.S. 25 ... (1965), the Court vacated its order denying certiorari and

> reversed the judgment under review when the plaintiff demonstrated that the Court of Appeals had erred in its interpretation of the applicable standard and that another Court of Appeals subsequently had applied the standard correctly in another case arising out of the same disaster. By contrast, in *Weed v. Bilbrey*, 400 U.S. 982 ... (1970), the Supreme Court declined to reopen an earlier disposition. After certiorari had been denied in *Weed*, the writ was granted in another case and the Court altered the law in a way that also would have benefitted the petitioner in *Weed*. Although the Court's action might possibly be explained by the unique nature of its discretionary certiorari review, it seems more probable that the Court decided to limit its abrogation of the finality doctrine to situations involving a common disaster.

Id. at 63-64. The court in *Blue Diamond Coal* does not mention *Weed*, although the "super-reach back" companies' situation appears to be much more analogous to the facts surrounding *Weed* than to the facts surrounding *Gondeck*. *Compare Weed*, 400 U.S. at 982-83 (Douglas, J., dissenting from denial of motion for leave to file petition for rehearing), *with Gondeck*, 382 U.S. at 26-28. Given the Seventh Circuit's discussion in *McGeshick*, and the fact that *Weed* seems to be more analogous to this case than *Gondeck*, this court declines to extend the reasoning of *Gondeck* to the instant case, which does not involve a "common disaster" situation.

The court in *Blue Diamond Coal* also relied upon *Pierce*, which is another "common disaster" case. In *Pierce*, the Tenth Circuit relied upon *Gondeck* in reaching its holding that Rule 60(b)(6) relief was justified. The court distinguished its prior decision in *Collins* (discussed above) in the following

manner: "*Collins* differs from the instant case in that there the decisional change came in an unrelated case. Here it came in a case arising out of the same accident as that in which the plaintiffs now before us were injured." *Pierce*, 518 F.3d at 723. As discussed above, *Collins* involved two separate constitutional challenges to the same provisions of the same statute. In this way, *Collins* is far more analogous to the present case than is the "common disaster" situation in *Pierce*.

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Furthermore, the Seventh Circuit has been somewhat critical of *Pierce's* holding. In *Norgaard*, 121 F.3d at 1078, the Seventh Circuit discussed *Pierce* in relation to *Plaut v. Spendthrift Farm*, 514 U.S. 211 (1995):

> One court of appeals has held that a change of law by a state court in litigation involving the same events as the federal case may permit reopening. *Pierce v. Cook & Co.*, 518 F.2d 720 (10th Cir. 1975) (en banc). No matter how persuasive a litigant's arguments, a federal court cannot alter or affect state law the way a state

> court may. A litigant whose adversary's choice of forum disables it from making a request for modification of state law--that is, a plaintiff whose case is removed to federal court, or a defendant haled into federal court initially--has a much better claim to use Rule 60(b)(6), if state law later changes in its favor, than do litigants such as the Norgaards. But even this claim is not strong enough, given *Plaut*. If Congress cannot tell a federal court to reopen a judgment in order to give the losing side the benefit of a change of law, neither may a state. Legitimate interests in finality also counsel against revision. Thus it can be no surprise that other circuits have not followed *Pierce*.

Norgaard, 121 F.3d at 1078. In light of *Norgaard*, and the fact that *Collins* is far more analogous to this case than is *Pierce*, this court declines to rely upon *Pierce*. This court also declines to rely upon *First American National Bank of Nashville* (cited by the court in *Blue Diamond Coal)*, for the reason that the sole case relied upon by the district court in reaching its holding is *Pierce*. *See* 111 F.R.D. at 75.

The final relevant case cited by the court *in Blue Diamond Coal* is *Batts v. Tow-Motor Forklift Co.*, 66 F.3d 743 (5th Cir. 1995). In *Batts*, the Fifth Circuit reversed a district court's granting of Rule 60(b)(6) relief, holding that the district court abused its discretion in opening a final judgment based upon a subsequent change in the law. However, in a footnote, the court noted that there are some situations in which a subsequent change in the law "may" constitute an extraordinary circumstance warranting Rule 60(b)(6) relief. One of the situations is "where the subsequent court decision is closely related to the case in question, such

as where the Supreme Court resolves a conflict between another circuit ruling and that case." *Id.* at 748 n.6 (citing *Ritter v. Smith,* 811 F.2d 1398, 1402-03 (11th Cir.), *cert. denied,* 483 U.S. 1010 (1987)).

The Supreme Court in *Eastern Enterprises* was not resolving a conflict between circuits--all of the courts of appeals that had considered the issue had upheld the Coal Act against constitutional challenges. *See Eastern Enterprises,* 524 U.S. at ----, 118 S. Ct. at 2144 n.4. More importantly, the facts of *Ritter* are very different--and far more exceptional--than the facts of this case.

In *Ritter,* the Eleventh Circuit held that the Alabama death penalty statute was unconstitutional and ordered the district court to grant a writ of habeas corpus if Alabama did not give the defendant a new sentencing hearing. On December 3, 1984, the district court gave Alabama until June 1, 1985 to resentence the defendant. However, on December 10, 1984, the U.S. Supreme Court granted certiorari in a case challenging the constitutionality of the same statute--*Baldwin v. Alabama,* 469 U.S. 1085 (1984). Before June 1, 1985, the *Ritter* district court granted the state's motion for extension of time to resentence the defendant because of the pending Supreme Court case. On June 17, 1985, the Supreme Court upheld the constitutionality of the Alabama statute. *See Baldwin v. Alabama,* 472 U.S. 372 (1985). Shortly thereafter, the state moved for Rule 60(b)(6) relief in *Ritter's* case, seeking to set aside the district court's order which conditionally granted the writ of habeas corpus. The district court granted the motion and the Eleventh Circuit affirmed. *See Ritter, 811* F.2d at 13991400.

In affirming the district court's grant of Rule 60(b)(6) relief, the Eleventh Circuit stated:

> Our investigation thus leads us to conclude that something more than a `mere' change in the law is necessary to provide the grounds for Rule 60(b)(6) relief. Several factors in this case, in addition to the fact of the change in the law, persuade us that the circumstances are sufficiently extraordinary to warrant relief under Rule 60(b)(6).
>
> A significant factor in this case is the fact that the previous, erroneous judgment of this court had not been executed. When a judgment has been executed a concomitantly greater interest in finality exists. This reasoning explains, in part, the result *in Collins* [*v. City of Wichita*, 254 F.2d *837* (10th Cir. 1958)]. The judgment in Collins was fully executed.
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> * * *
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> Similar reasoning can be seen when courts must deal with the effect a change in law has on a consent decree or permanent injunction. Such judgments typically have both past effects and future implications. Generally courts have refused to undo the past, executed effects of the judgments, but they have, almost uniformly, recognized that it would be unjust to give prospective effect to a judgment now known to be improper. ... However, once the judgment has been executed and its effects are no longer prospective, modification of the judgment ordinarily will be unavailable. Thus, the fact that the previous judgment of this court, though final, was

> unexecuted is a significant factor in the extraordinary circumstances favoring relief from the judgment in this case.

Id. at 1401-02 (citations omitted). Other factors that led the court to affirm the grant of Rule 60(b)(6) relief (other than the fact that the prior judgment had not been executed) included the "minimal delay between the finality of the judgment and the motion for Rule 60(b)(6) relief," and "considerations of comity" that are present when "[a] federal court's grant of a writ of habeas corpus upsets the finality of a state court judgment." *Id.* at 1402-03. A final factor cited by the court was the "close relationship" between *Ritter* and *Baldwin*--the U.S. Supreme Court granted certiorari in *Baldwin* for the express purpose of resolving the "significant conflict" between the Eleventh Circuit in *Ritter* and the Alabama Supreme Court in *Baldwin*. *See Baldwin*, 472 U.S. at 374. *Ritter* described this final factor as being analogous to the "common disaster" situation in *Pierce*, and again distinguished *Collins* on this ground. *See Ritter*, 811 F.2d at 1402-03.

In the present case, unlike in *Ritter*, there is no unexecuted judgment. This Rule 60(b)(6) motion does not concern any prospective effects of this court's judgment; the only issue that has been raised is the past monies paid by Plaintiffs to the Combined Fund. In addition, there was a greater delay between the judgment and the Rule 60(b)(6) motion in this case than in *Ritter* (four years versus nine months), and there are no considerations of comity present in this case. Finally, as discussed above, this case is more analogous to *Collins* than to *Pierce*, and further, the persuasive value of *Pierce* is diminished in this Circuit in light of *Norgaard*.

Therefore, after considering the legal underpinnings of the court's opinion in *Blue Diamond Coal,* this court is not persuaded that Rule 60(b)(6) relief is warranted in this case. And to the extent the differences between the plaintiff in that case and the Plaintiffs in this case are relevant, the differences militate against Rule 60(b)(6) relief in this case. The first factor listed by the court in *Blue Diamond Coal* that favored the granting of Rule 60(b)(6) relief was: "the amount of money involved (over Fourteen Million from a reorganized Chapter 11 debtor)." *Blue Diamond Coal Co. v. Shalala, No.* 3:93-CV-473, slip op. at 9 (E.D. Tenn. November 4, 1998). As discussed above, this court is aware of no authority indicating that the amount of money involved is a relevant factor in Rule 60(b)(6) motions--let alone that it should be entitled to great weight. But to the extent the amount of money is important, Blue Diamond Coal Co. paid far more money to the Combined Fund than any of the Plaintiffs here. Further, there has been no contention that any Plaintiff in this case is a Chapter 11 debtor or is otherwise the subject of bankruptcy proceedings.

In conclusion, while it is certainly understandable for Plaintiffs to feel as if they have been treated unfairly, Plaintiffs have nevertheless failed to demonstrate that sufficiently exceptional circumstances exist to overcome the strong policy favoring the finality of judgments. Therefore, Plaintiffs' Motion for Relief from Judgment is **DENIED**.

ALL OF WHICH IS ORDERED this 17th day of November 1999.

John Daniel Tinder, Judge
United States District Court